



Tri-Party Agreement

February 11, 1993

Dear Interested Citizen:

Thank you for your comments regarding the low-level mixed waste laboratory services at Hanford. The Washington State Department of Ecology, U.S. Environmental Protection Agency, and U.S. Department of Energy appreciated your comments about Hanford laboratory services.

After considering your comments about the Hanford Federal Facility Agreement and Consent Order (Hanford Tri-Party Agreement) Milestone 14-00, the agencies made changes to Milestone 14. Milestone 14 directs the schedule for establishment and operation of a low-level mixed waste laboratory near the Hanford Site.

Enclosed please find the Hanford Tri-Party Agreement low-level mixed waste laboratory services' change control form and the agencies' response to comments.

For further information, please contact Mary Getchell, Ecology, P.O. Box 47600, Olympia, WA 98504-7600, 1-800-321-2008. Thank you.

Sincerely,

David B. Jansen, P.E.
Hanford Project Manager

Paul Day
Hanford Project Manager
U.S. Environmental Protection Agency

Steve Wisness
Hanford Project Manager
U.S. Department of Energy



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HANFORD TRI-PARTY AGREEMENT

MILESTONE 14: LOW-LEVEL MIXED WASTE LABORATORY

SUMMARY OF COMMENTS AND RESPONSES

JANUARY 1993

**HANFORD TRI-PARTY AGREEMENT
MILESTONE-14: LOW-LEVEL MIXED WASTE LABORATORY
SUMMARY OF PUBLIC COMMENTS**

January 1993

Washington State Department of Ecology, U.S. Environmental Protection Agency (EPA), and U.S. Department of Energy (USDOE) conducted a 45 day public comment period to obtain public comments about draft changes to the Hanford Federal Facility Agreement and Consent Order (Hanford Tri-Party Agreement).

Specifically, the agencies asked the public to comment on proposed changes to Milestone 14, the schedule in the Hanford Tri-Party Agreement that directed USDOE to construct and operate a low-level mixed waste laboratory at Hanford by January 1992.

The public comment period began April 20, 1992 and ended June 3, 1992. Thirteen individuals and organizations provided written comments about the proposed changes. To gather verbal public comments and to discuss the proposed changes directly with the public, the agencies also conducted two public meetings: May 26, 1992 in Richland and May 27, 1992 in Seattle.

You can review the written comments and meeting transcripts at the Hanford Public Information Repositories:

U.S. Department of Energy-Richland Operation, Public Reading Room
Washington State University- Tri-Cities Campus, 100 Sprout Road, Room 130,
Richland, Washington 98352
(509) 376-8583

University of Washington, Suzzallo Library, Government Publications Room,
Seattle, Washington 98195
(206) 543-4664

Gonzaga University, Foley Center
E. 502 Boone, Spokane, Washington 99258
(509) 328-4220

Portland State University, Bradford Price Millar Library
Corner of S.W. Harrison and Park, Portland, Oregon 97207
(503) 464-4617

To receive a copy of the written comments and meeting transcripts, contact Mary Getchell, Department of Ecology, P.O. Box 47600, Olympia, Washington 98504-7600, 1-800-321-2008.

HANFORD TRI-PARTY AGREEMENT
MILESTONE 14: LOW-LEVEL MIXED WASTE LABORATORY
SUMMARY OF COMMENTS AND RESPONSE
JANUARY 1993

USDOE Unilateral Decision

RESPONDENT: USDOE

Comment: There is no excuse for Washington State Department of Ecology and U. S. Environmental Protection Agency (EPA) to be unaware of USDOE's decision to not build the laboratory. Ecology and EPA are shirking their responsibilities by agreeing with USDOE's unilateral decision. Why did EPA and Ecology not know about USDOE's unilateral decision? USDOE should not be allowed to make unilateral decisions. The Hanford Tri-Party Agreement should ensure that they do not. The public was concerned about the deliberate breach of the Hanford Tri-Party Agreement. Also, the public was disappointed that they were not told about this during 1991 Hanford Tri-Party Agreement Change Package Public Meetings.

Response: The USDOE did unilaterally decide to place the lab on hold to investigate the possible privatization of the lab. The regulators were notified in writing in February 1991 that the concept of privatization was being considered and the decision was a subject of discussion in a meeting among John Wagoner (USDOE), Christine Gregoire (Ecology), and Dana Rasmussen (EPA) in early March 1991. The notification to the regulators that the Waste Sampling and Characterization Facility construction project was put on hold did not occur until May 16, 1991. However, an official TPA change package was not submitted until October 31, 1991.

Opposed to Using Commercial Laboratories

RESPONDENT: USDOE

Comment: "I'm very much against using commercial labs to analyze samples from Hanford. "Commercial labs are not economically responsible." Commercial labs are not economically responsible. Commercial labs should only be used to check the accuracy of the lab at Hanford. Using commercial laboratories may be an inefficient use of taxpayers' money. The further off-site samples are taken, "the more likely that something can get screwed up." Compare the costs of using commercial laboratories to building a full-scale lab at Hanford. What is the cost of moving samples in-state and across state borders? Prefer accurate on-site testing that takes a few more months than private-contract lowest-cost testing that risk inaccuracy to meet unresearched or unreasonable milestone deadlines.

Response: A combination of on-site and off-site commercial laboratories is currently being used to support Hanford analytical needs. Contracts with the commercial laboratories are structured to assure that quality analytical data

is produced. The contracts allow for routine assessments of laboratory performance and qualifications and require participation in various sample exchange programs including the EPA Performance Evaluation Program. Preliminary evaluations indicate that the costs of using on-site Hanford laboratories, versus commercial laboratories, may be double. This is because of higher USDOE operating costs. Sample transportation costs and assessment costs of commercial laboratory use are not expected to affect the savings derived from the use of commercial laboratories. Once a Tri-City area laboratory is built, transportation costs will be further reduced.

RESPONDENT: ECOLOGY

Comment: EPA and Ecology should not enter into the settlement with USDOE, "USDOE has not built up very much credibility for standing behind what it says it's going to do." An individual urged "the Department of Ecology to hold the DOE to the line and make them fulfill one of their commitments at least." Another individual stated that they were against the settlement to delay the cleanup any longer, saying USDOE breaks their commitments; they will break the settlement on Milestone 14.

Response: Milestone M-14-00 of the Hanford Tri-Party Agreement requires USDOE to complete construction and initiate operations of a low level-mixed waste laboratory on or before January 31, 1992. The purpose of the milestone was to ensure that analysis of Hanford samples would not be delayed. The Hanford Tri-Party Agreement allows a 75 day annual average for laboratory turnaround times for low-level and mixed waste (up to 10 mr/hour) not to exceed 90 days. The regulators are concerned not only about USDOE's lack of commitment to construct and initiate operations of a low-level mixed waste laboratory, but their overall inability to provide sample analyses per the time frames specified in the Hanford Tri-Party Agreement.

During the dispute resolution process for Milestone 14, the regulators remained focused on not just USDOE's violation of the milestone, but on what was needed to develop a sampling and analyses plan that would meet and maintain the necessary analytical turnaround times. In light of the fact that USDOE failed to construct the laboratory in accordance with the time frames set forth in the Hanford Tri-Party Agreement, the regulators focused on how improved performance in laboratory sample turnaround time could be achieved with the laboratory capacity available. The settlement requires USDOE to provide for procurement of locally-provided laboratory services for the long term designed to handle 80% or more of the low-level analytical requirements for the Environmental Restoration/Waste Management Programs at the Hanford Site.

RESPONDENT: USDOE

Comment: Milestone 14 or any other part of the Hanford Tri-Party Agreement should not be changed. USDOE should not be allowed to make changes to their "liking."

Response: Articles XXXIX and XL discuss types and bases for changes to the

Hanford Tri-Party Agreement. Any proposed change to the agreement requires negotiations among the three parties, as well as their agreement. The agencies are not permitted to make Tri-Party Agreement revisions without consultation and agreement of the other two. In this case, USDOE made a unilateral decision which resulted in a milestone being missed. Given the missed milestone the three agencies entered dispute resolution and determined an approach which resulted in a stipulated penalty being assessed.

RESPONDENT: ECOLOGY

Comment: Opposed to privatization. Would like EPA and Ecology to make decision about laboratory by what is the safest method to do the job with the best expertise available. Believe Hanford has the safest method and best expertise to do the job. Hanford has the expertise to analyze laboratory samples, therefore the analyzing work should stay at Hanford.

Response: Whether analytical services are to be done by on-site or off-site commercial labs is secondary to the regulators primary objective: obtaining quality low-level mixed waste analytical data within the time frames specified in the Hanford Tri-Party Agreement. The regulators recognize the desire to have these services on site and the expertise available at Hanford. In respect to the safest method for conducting analytical processes, Ecology would expect any laboratory providing analytical services to follow the EPA protocols, i.e., Contract Lab Program and/or SW-846 set forth for environmental laboratories. Any deviations from these standard protocols by laboratories providing analytical services would be required to have prior documented approval from the EPA and Ecology.

RESPONDENT: EPA

Comment: Keep the lab work at Hanford and the regulators should ensure that it remains at Hanford.

Response: EPA and Ecology share the responsibility for overseeing the cleanup work at Hanford, which includes the laboratory function. As provided by the settlement to be incorporated as explicit Hanford Tri-Party Agreement milestones, USDOE will be required to provide necessary laboratory services in the Tri-City area. The regulators' role is to review each laboratory's quality assurance plans and to ensure that the holding times and turnaround times are met by the labs. To achieve EPA's and Ecology's mandates to protect human health and the environment, the regulators' authority is to ensure that Hanford laboratory sampling capacity is met to continue important cleanup.

Proponents of Settlement

RESPONDENT: USDOE

Comment: Agree with the proposed settlement, to the extent that the off-site laboratory capability should be located in the Tri-City area. Another individual stated support for the settlement, expressing that commercial laboratories be located in the Tri-City area.

Response: Referring to the new settlement reached, based upon public comment, the settlement will require USDOE to proceed with an action to procure locally provided commercial analytical services. This action will either result in construction of new laboratory facilities in the Tri-City area or an expansion of existing commercial analytical capabilities in the Tri-City area, depending upon the outcome of USDOE's procurement action.

RESPONDENT: USDOE

Comment: Privatization is a good idea to keep costs down. The idea behind privatization is that competition would keep the costs on a real basis without relying on one facility. The settlement should be supported if it will validate costs which are otherwise un-validated.

Response: The commercial laboratory procurement is competitively bid. Current plans are to award multiple contracts to meet the current and future needs for laboratory services and to provide for backup capability. However, to ensure compliance with the Tri-Party Agreement Milestone, USDOE will provide for procurement of locally-provided laboratory services for the long term designed to handle 80% or more of the low-level analytical requirements for the Environmental Restoration/Waste Management Programs at the Hanford Site. The requirement for local services shall be satisfied by a facility located within a 25 mile radius from the Hanford Site Boundary.

Laboratory in the Tri-Cities

RESPONDENT: ECOLOGY

Comment: The settlement does not guarantee that the lab work will remain in the Tri-Cities. Is the USDOE mandating that the laboratory be within a geographical location of the Tri-Cities? Language in the settlement stating that USDOE must plan to build a laboratory owned and operated by USDOE or off-site laboratory to be operated by a private laboratory in the Tri-Cities area "to the extent allowed by the law," (M-14 settlement taken to public comment April 1992) "appears to be a large enough parenthetical phrase to drive a large truck through containing samples going someplace else." (public comment). Language should not say on-site or off-site, make sure it is on-site. Strike the term "or off-site". This would still allow for privatization while keeping the lab in the Tri-Cities area.

Response: The regulators' chief concern is that USDOE can provide an adequate laboratory capacity to sample and analyze data critical to cleaning up Hanford. USDOE, EPA, and Ecology understand public concern about keeping Hanford work at Hanford and concerns regarding transportation issues. The three agencies have agreed that a laboratory in the Tri-Cities area is logical to reduce sample turnaround times, and to provide the three agencies with greater access and oversight to the laboratories.

RESPONDENT: USDOE

Comment: What is the term of the lab contract that is planned to be let? Conditions are needed in lab contracts: Unions and wage scale provisions; qualification provisions; and disallowing contracts to laboratories with serious environmental violations of more than \$100,000 fines.

Response: The terms of the requests for proposal allow multiple year awards of multiple contracts, totalling an estimated \$250 million. They include detailed requirements which are evaluated and must be met in order to qualify for a contract award. These qualifications include participation in various Performance Evaluation and inter-comparison studies programs administered and operated by EPA and USDOE. The subject contract also contains a Termination for Default clause which can be executed in the event of a failure to perform, or serious environmental violations or suspensions imposed by the regulatory agencies. According, however, to the laboratory milestone changes based upon public comment, to ensure compliance with the Tri-Party Agreement Milestone, USDOE will provide for procurement of locally-provided laboratory services for the long term designed to handle 80% or more of the low-level analytical requirements for the Environmental Restoration/Waste Management Programs at the Hanford Site. The requirement for local services shall be satisfied by a facility located within a 25 mile radius from the Hanford Site Boundary.

Penalties

RESPONDENT: EPA

Comment: In Attachment I of the Notice of Intent, what defines current violations? What time frame defines "current"? If USDOE will be bound to laboratory turnaround times, will penalties be assessed? These items appear contradictory. Clarification is necessary in the final document.

Response: To date, EPA and Ecology have elected not to take enforcement action under the Hanford Tri-Party Agreement for USDOE's violation of laboratory turnaround times. The settlement requires USDOE to proceed with an action to procure additional commercial analytical capability, to be provided in the Tri-Cities area. However, it should be clear that the requirement for 75 day turnaround times has not been waived by this dispute settlement or milestone change.

RESPONDENT: EPA

Comment: Has USDOE paid the \$100,000 penalty assessed by EPA? Have USDOE and EPA agreed to a lesser amount? Can EPA lawfully assess fines at Hanford? EPA assessing a fine to USDOE is "ludicrous". Taxpayer pays for the fine--the concept seems strange. USDOE should be fined \$300,000 for missing milestone. What was the rationale for the \$100,000 fine and what was the thinking in terms of the actual penalty that would result?

Response: The \$100,000 has not yet been paid by USDOE. In accordance with federal budget procedures, USDOE must identify the penalty amount in its

current budget planning year process. This budget planning year begins October 1, 1993 (fiscal year 1994). USDOE has identified the \$100,000 penalty in its fiscal year 1994 budget request, which will be sent to Congress for approval.

EPA can assess stipulated penalties against USDOE for failure to comply with the Hanford Tri-Party Agreement. EPA's statutory authority on this matter was established by Congress in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), Sections 122(1) and 109(a)(1)(E). Stipulated penalty language was also developed in model language negotiated between USDOE Headquarters and EPA Headquarters for federal facility agreements. This language is contained in the Hanford Tri-Party Agreement.

It is true that money for penalties assessed to federal facilities comes from the taxpayers. Stipulated penalties are additional funds and, hence, do not detract from the USDOE funds available for Hanford cleanup. Stipulated penalties collected by EPA go into the Superfund trust account, which is the "fund" established by Congress to clean up hazardous sites across the nation. It should also be noted that the salaries of EPA Region 10 staff who work on the Hanford Tri-Party Agreement are paid from the Superfund trust account. Admittedly, the concept of one federal agency collecting a penalty from another federal agency may appear to be nothing more than an accounting exercise. EPA must use the enforcement tools that are available, and in the case of enforcement against USDOE under the Hanford Tri-Party Agreement, the available tool is the assessment of stipulated penalties. EPA has found that stipulated penalties do provide an incentive toward compliance by federal facilities, because it requires the non-compliant federal agency to admit to the public, to the Office of Management and Budget, and to the Congress that it has violated the terms of a federal facility cleanup agreement.

EPA does not know the basis for the assertion that the penalty amount should have been \$300,000. The amount of \$100,000 was assessed in consideration of all the provisions of the dispute resolution settlement. For example, USDOE's agreement to fund additional expedited response actions in fiscal year 1994 will represent an environmental benefit to Hanford worth many times the amount of the penalty. Without the provisions for the additional expedited response actions, the penalty amount might have been higher. This type of penalty negotiation is frequently done by EPA with private sector facilities, to provide as much environmental benefit to the local site as possible.

RESPONDENT: ECOLOGY

Comment: For violations of this agreement, Ecology should assess USDOE fines, regardless of state's authority to issue penalties. Ecology should go through the motions. Insert "Ecology will provide notice to the Department of Energy of the amount of the fines that would have been levied against them if they were not protected by the sovereignty." Explain the Supreme Court decision in relationship to the sovereign immunity and the regulators' authority to issue fines.

Response: At the time of the negotiations the State did not have authority to impose penalties against the federal government under the Resource Conservation and Recovery Act laws that Ecology enforces on the Hanford Site.

The Supreme Court ruled (April 15, 1992) that states could not fine federal agencies for violating anti-pollution laws. Specifically, the court ruled that Ohio could not penalize the U.S. Department of Energy for contaminating the soil, air and surface water at the Fernald, Ohio, uranium processing plant. The Supreme Court decision at the time enforced that states did not have the authority to issue fines against federal agencies.

Sampling Turnaround Time

RESPONDENT: USDOE

Comment: USDOE's Request for Proposal for laboratories calls for a 45 day turnaround time, thus the 75 day turnaround time in the settlement should be feasible. If a private contractor agrees to build a lab in the Tri-Cities, USDOE could spend their dollars toward other areas of cleanup. Can commercial labs meet the expected turnaround times?

Response: USDOE is currently involved in a large commercial laboratory procurement. The subject procurement contains a 45 day turnaround time requirement. Through the Technical Proposal evaluations and negotiation sessions, all Offerors have committed to meet the 45 day requirement. The procurement contains a Liquidated Damages clause which is invoked for samples not meeting the 45 day turnaround time requirement. By awarding multiple contracts and establishing a network of laboratories, continued failure by a laboratory to meet the 45 day turnaround time requirement may result in temporary or permanent reduction in the contracted workscope under the Termination for Default clause. Workscope reductions would be made up through contract adjustment of the other network laboratories.

RESPONDENT: ECOLOGY

Comment: A commentor is concerned about sample turnaround times, stating that by the time the sample is tested the short lived radionuclides are gone. A concern was stated about the sample backlog at Hanford. A commentor said the public needs a guarantee that the proposed 75 and 90 day sample turnaround times will be met. The public needs a guarantee that Ecology and EPA can disqualify labs for not meeting turnaround times and for environmental violations and that EPA and Ecology will inspect the labs for quality assurance and regulatory compliance. Do Ecology or EPA conduct spot inspections of USDOE and contract labs? Regulators should be funded to inspect labs.

Response: EPA and Ecology are implementing a sample tracking system to monitor samples and associated laboratory turnaround times for the samples. This will provide the regulators with sufficient data to determine if the sample turnaround times specified under the Hanford Tri-Party Agreement are being met. In addition, the regulators are in the process of developing a

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protocol with USDOE for inspections of laboratories conducting analysis of samples associated with Hanford cleanup activities. It is important to point out that these inspections will evaluate adequacy of laboratory operations and procedure compliance. These inspections are not associated with any certification program and the results of inspections will not be used to assess penalties. Ecology has no authority to penalize or disqualify federally contracted labs for not meeting EPA set protocols for analysis of samples. However, EPA does have such authority. Neither EPA nor Ecology has the authority to disqualify laboratories contracted by USDOE. However, EPA does have the authority to penalize USDOE for failing to comply with sample turnaround times, identified in the Hanford Tri-Party Agreement.

Expedited Response Actions

RESPONDENT: USDOE

Comment: Has there been a dollar amount set for conducting the proposed Expedited Response Actions (ERAs)? What is planned for the ERAs? Point 11 of the settlement, regarding the ERAs needs clarification.

Response: EPA, Ecology and USDOE met in July to discuss potential ERAs. At the time the laboratory milestone settlement was released for public comment, the specific ERA had not been identified. EPA, Ecology, and USDOE met during July and August to discuss potential ERAs to satisfy the laboratory milestone settlement. As a result of these meetings the three agencies agreed to undertake an ERA at N-Springs to remediate strontium-90 contaminated groundwater that is seeping into the Columbia River. Definitive cost estimates for this project have not been developed, but the parties plan to continue to meet to define the scope of the ERA so that adequate funding can be requested in the fiscal year 1994 budget. In response to public comments the expedited response action in the settlement agreement attempts to clarify the N-Springs ERA.

Public Involvement

RESPONDENT: ECOLOGY

Comment: The public was kept in the dark regarding Milestone 14 proposed changes.

Response: Ecology, EPA, and USDOE informed the public of the Milestone-14, low-level mixed waste laboratory, proposed changes several times before the beginning of the formal public comment period (April 20-June 3, 1992). In a February 3, 1992, news release, Ecology stated that they rejected USDOE's proposal to eliminate the low-level mixed waste laboratory at Hanford. In an April 7, 1992, news release, EPA and Ecology announced a tentative settlement in the agencies' dispute about laboratory capacities at Hanford. In the April 1, 2, 8, and 9 Hanford Tri-Party Agreement Quarterly Public Meetings, Ecology stated that the laboratory dispute marks a major disagreement between the three agencies. In each case, the regulators explained that the opposition to the milestone change was their concern for USDOE's ability to achieve

laboratory capacities. The regulators (Ecology and EPA) contend that in order to continue Hanford cleanup activities, sampling and analysis activities must be conducted in a timely manner.

RESPONDENT: ECOLOGY

Comment: How was the public informed about the Milestone 14 public comment period? Unable to locate Milestone 14 document in Crosby Library information repository.

Response: The public was informed about the Milestone 14 public comment period via direct mail, print and radio advertisements, news releases resulting in media coverage, and two public meetings during the public comment period. The Crosby Library received the Milestone 14 document April 16, 1992. During a public comment period, or at any time, if you are unable to locate a Hanford Tri-Party Agreement document and the public information repository staff are unable to assist you, contact Hanford Cleanup toll free, 1-800-321-2008, for further assistance.

RESPONDENT: ECOLOGY

Comment: Was the public given an opportunity to comment about USDOE's unilateral decision to not build the laboratory prior to the dispute resolution process and resolution? The dispute resolution process appears to be complete without any public comment. Was the public given the opportunity to comment on the proposed punitive actions? "If the public were not consulted, and the decisions have already been finalized, you are perpetuating an abuse of public trust by holding a hearing that is only symbolic."

Response: The public may always comment on any aspect of Hanford cleanup activities. However, the current formal public comment period for major milestone changes, such as the low-level mixed waste laboratory, occurs following the dispute resolution process. During the low-level mixed waste laboratory public comment period, the public was given an opportunity to comment on the proposed punitive actions. Following a settlement for proposed changes to the low-level mixed waste laboratory schedule, a public comment period transpired, including two public meetings. The two public meetings gave the public an opportunity to ask questions and provide comments on the proposed changes. The comments were considered before final changes were made to Milestone-14, the low-level mixed waste laboratory. Because of public comments the agencies made changes to the laboratory milestone.

RESPONDENT: ECOLOGY

Comment: At the end of the one year trial period, will a formal study report be produced? Will the public have an opportunity to review the report?

Response: Based upon public comment, the settlement requires USDOE to forego the trial period discussed and to proceed with the procurement of Tri-City area provided commercial services. However, the laboratory turnaround times will continue to be tracked by both Ecology and EPA, and the Tri-Party

Agreement turnaround requirements are still in effect.

RESPONDENT: ECOLOGY

Comment: Thank you for the opportunity to comment about Milestone 14 at a public meeting.

Response: Ecology, EPA, and USDOE appreciate your participation and receptivity regarding the public meetings for the low-level mixed waste laboratory proposed changes. We believe that public meetings are an important forum for discussing proposed changes to cleanup schedules with you and to discuss the Hanford cleanup activities. Also, we contend that public meetings are an ideal forum for exchanging information with the public and gathering public comments to be considered in Hanford cleanup decisions. Our responsiveness to public comment is demonstrated by the action taken to modify the original settlement to clearly require local laboratory services.

Ecology, EPA, and USDOE continue to strive to inform and involve the public regarding Hanford cleanup activities. We appreciate your comments regarding our progress toward attempting to write understandable and informative advertisements.

Laboratories: General

RESPONDENT: EPA

Comment: Essential language defining the regulators' criteria for evaluating the laboratories' performance is needed. What is the time period for the regulators' evaluation process? These elements need to be in the settlement.

Response: Since the settlement was released for public comment, the three agencies have decided to forego the on-site option in favor of procurement of local analytical laboratory services. The time period discussed in the public meetings for evaluation of USDOE's ability to meet the 75-day turnaround times began on May 1, 1992, and extends through April 30, 1993. EPA has initiated an effort to independently track the turnaround times for the low-level radioactive analyses, and for other analyses required by the Hanford Tri-Party Agreement. The agencies elected to not define the specific evaluation criteria as part of the dispute resolution settlement. The criteria or requirement is that low-level radioactive analysis turnaround times not exceed an average of 75-days.

RESPONDENT: USDOE

Comment: Short term contracts should be granted to provide incentive for optimum performance. Hanford Tri-Party Agreement agencies and public should be provided frequent assessment points.

Response: Because of the length of time and resources required to complete a competitive bid procurement in accordance with government/USDOE regulations, and the large capital investment required by the commercial firms, a decision

was made to award longer term contracts.

RESPONDENT: ECOLOGY

Comment: Will the laboratories be Resource Conservation and Recovery (RCRA) sites? Is the public paying the labs to develop their RCRA licensing, etc.? Who is responsible for the samples once off of the Hanford Site?

Response: The USDOE ships samples to laboratories that are permitted RCRA facilities. A laboratory may wish to obtain a RCRA permit if they choose to treat, store, or dispose of their laboratory wastes. The Waste Sampling Characterization Facility Lab, currently under construction will not obtain a RCRA permit since it will be storing wastes for less than 90 days and, at this time, is not planning to treat or dispose of waste. The sample material will be returned to the generating facility for storage or disposal. The Nuclear Regulatory Commission licensing is required of commercial laboratories that receive radioactive samples. The Nuclear Regulatory Commission licensing is not applicable to USDOE facilities so the on-site lab will not be obtaining this license. In addition, laboratories are not required to have a RCRA permit to ship samples.

RESPONDENT: EPA

Comment: Is there a certification program under EPA's contract laboratory program that deals with mixed waste types of samples? How many commercial labs that exist currently in the country are licensed and capable of analyzing mixed waste?

Response: EPA's Contract Laboratory Program (CLP) was designed to ensure that labs under contract by EPA's Superfund program would be able to perform to standard criteria. This includes the ability to run the required analyses, to provide the extensive quality assurance required by Superfund, and to participate in EPA's Performance Evaluation (PE) program of analyzing blind or spiked samples provided periodically by EPA. Analysis of mixed waste falls under level 5 of the CLP program, referred to as Special Analytical Services. In these cases, special procedures may have to be developed to analyze the samples. EPA does not have a certification program beyond the requirements for CLP laboratories as noted above. For Hanford, the on-site and off-site labs must be able to use CLP protocols, and provide CLP level quality assurance documentation. The labs may voluntarily participate in the PE program, but this is not required, by EPA. USDOE may require the commercial laboratories to participate in the Performance Evaluation Program as part of its contract provisions. Since these labs are not under contract to EPA, they are not considered CLP labs for Hanford work. The Hanford Tri-Party Agreement agencies do not issue licenses to laboratories. The Nuclear Regulatory Commission (NRC) does have licensing requirements for labs that accept low-level radioactive wastes.

The number of labs nationally that can run some type of low-level mixed waste analysis is difficult to estimate. Additionally, there is a wide range in the capacity of these laboratories. We do know that the overall number of such

labs has increased over the past few years, each with certain limitations on sample acceptance criteria set by the NRC licenses. Also, some of the existing labs are increasing their throughput capacity, resulting in additional nationwide capacity. USDOE, through Westinghouse Hanford Company, issued a request for proposal last fall for its upcoming laboratory services contract. At that time, eight laboratories across the country responded to that request for proposal.

RESPONDENT: USDOE

Comment: How will USDOE address the quality assurance question for labs and how will USDOE implement it? Settlement appears loose. Satisfactory performance to include minimum industry standards for quality assurance is necessary.

Response: The lab procurement includes detailed requirements that are evaluated and must be met in order to qualify for a contract award. These qualifications include participation in various Performance Evaluation (PE) and inter-comparison studies programs administered and operated by EPA and USDOE. Facility assessments will be performed prior to initiation of sample submittal to the laboratories and routinely on a semi-annual basis throughout duration of the contract.

Other

RESPONDENT: USDOE

Comment: Why can't the lab work stay at Hanford? Why must it go off-site for a year or two?

Response: On-site laboratories have neither the capacity nor the capability to currently perform the work required. On-site lab capacity must be maintained for those samples with elevated activity levels which cannot be sent off-site.

RESPONDENT: EPA

Comment: Final document should state that none of the conditions in the settlement are open for the dispute resolution process.

Response: USDOE has already agreed to not dispute EPA's or Ecology's decision, and that agreement is specified in the dispute resolution settlement.

RESPONDENT: EPA

Comment: USDOE and EPA should brief the Office of Management and Budget jointly.

Response: USDOE has the responsibility for establishing its budget and briefing Office of Management and Budget as necessary. However, EPA has had

an increasing role with the Office of Management and Budget in regard to USDOE's budget and, in fact, has already discussed the penalty issue, as well as funding additional Expedited Response Actions in fiscal year 1994 with the Office of Management and Budget. Undoubtedly, EPA will have further discussions with the Office of Management and Budget on this matter as the fiscal year 1994 USDOE budget progresses. On June 25, 1992, USDOE sent a letter to EPA and Ecology. In accordance with the negotiated settlement, the letter identified \$5 million in an amendment to the fiscal year 1993 budget to support construction of an additional 18 laboratory modules.

RESPONDENT: ECOLOGY

Comment: The public needs to know what controls are in place to ensure that the USDOE laboratory design will be critically evaluated for its usefulness in meeting the analysis missions and will not be another USDOE "White Elephant." The Milestone 14 settlement will result in eventual milestone delays and more taxpayer disgust in the system. What is the role of regulators in USDOE's development of laboratory contingency plans? A specific oversight mechanism must be written into final document change and settlement.

Any commercial lab chosen to do the analytical work must fulfill the requirements of the Contract Laboratory Program (CLP). On-site contractor laboratories are better than most any commercial environmental laboratories. The choice of an off-site laboratory is restricted by the following:

- Many laboratories are government sponsored;
- Many laboratories do not conduct CLP analysis;
- Many laboratories do not hold state radioactive material handling permits. Many labs do not have separate inorganic and organic labs. Commercial radiochemical analyses offered by these facilities are not necessary as these are required prior to shipping low-level radioactive samples off-site.
- State radioactive handling permits vary.
- Commercial laboratories operating under USDOE contract will be required to follow the new USDOE adopted RADCON Navy Nuclear Radiation Safety Protocol. The productivity in commercial laboratories operating under this protocol will be even more severely hampered due to a lack of personnel experienced with radioactive material handling.

On-site laboratories are unable to complete analyses timely and efficiently because of USDOE mismanagement of the Hanford Site.

- "Millions have been wasted trying to renovate fissile material laboratories and to convert them to environmental laboratories."
- USDOE has a Byzantine purchasing program that results in one to two year instrument purchase delays, with the purchasing administrative costs often exceeding the purchase price of the instrument.

Perhaps view the Fast Flux Test Facility's record for safety and public service as a model for Tri-Party Agreement activities.

Response: As part of the Milestone Dispute Resolution Agreement discussed at the public meetings, USDOE was required to develop contingency plans now for the construction of an on-site laboratory owned and operated by USDOE, or issuance of a request for proposal for construction of an off-site laboratory, to be operated by a private laboratory firm in the Tri-Cities area. Subsequently, in response to public comment, it has been made part of the Milestone 14 settlement that USDOE will be required to proceed with procurement of locally provided commercial laboratory capability.

In respect to adequacy of off-site labs versus on-site labs, all contracted labs must:

- a. Comply with CLP laboratory protocol requirements for Comprehensive Environmental Response Compensation and Liability Act (CERCLA).
- b. Be licensed by their state and/or the Nuclear Regulatory Commission (NRC) for nuclear materials.
- c. Perform comprehensive radiochemical analyses. The amount of radiochemical analyses being done on samples prior to shipment is minimal. If radiochemical analyses were to be performed on-site, a "cleaner" counting room would be required because the radiochemical background at 222-S laboratory is too high to achieve the required analyses level.
- d. Meet the holding times and turnaround times specified in the Hanford Tri-Party Agreement.

| | | |
|---|--|----------------------------|
| Change Number M-14-92-01 | Federal Facility Agreement and Consent Order Change Control Form Do not use blue ink. Type or print using black ink. | Date January 8, 1993 |
| Originator D. M. Wanek | Phone 376-5778 | |
| Class of Change <input checked="" type="checkbox"/> I - Signatories <input type="checkbox"/> II - Project Manager <input type="checkbox"/> III - Unit Manager | | |
| Change Title Provide Low-Level Mixed Waste Laboratory Services | | |
| Description/Justification of Change The Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement) milestone M-14-00 currently calls for completion of construction and initiation of operations of a low-level mixed waste laboratory by January 1992. The current milestone will be deleted and the following will be added: M-14-00 DOE shall comply with Senior Executive Committee Agreement on Resolution of Milestone M-14-00 Change Request Dispute (dated 1/8/93) M-14-01 Complete definitive design (completed) 11/90 Continued on Page 2. | | |
| Impact of Change See Page 2 for Impact of Change. | | |
| Affected Documents Hanford Federal Facility Agreement and Consent Order Action Plan, Appendix D, Table D-2 and Figure D-1. | | |
| Approvals ____ Approved ____ Disapproved DOE <u>[Signature]</u> 1/11/93 EPA <u>[Signature]</u> 1/8/93 Ecology <u>[Signature]</u> 1/8/93 | | |

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- M-14-02 Complete construction of 27 module Waste Sampling and Characterization Facility (WSCF) 10/93
(scope provides QA/QC to commercial services and process control support for liquid effluents)
- M-14-03 Initiate operations of 27 module WSCF 4/94
- M-14-04 DOE will proceed with procurement actions to provide low-level mixed waste commercial laboratory capacity sufficient to meet Tri-Party Agreement compliance requirements. Near-term laboratory capacity will not be specifically constrained to local services. However, to ensure compliance with the intent of the Tri-Party Agreement Milestone, RL will provide for procurement of locally-provided laboratory services for the long term designed to handle 80% or more of the low-level analytical requirements for the Environmental Restoration/Waste Management Programs at the Hanford Site. The date for commencement of local operations will be October, 1995.

The attached SEC agreement provides the narrative of the description and justification of the change.

Impact of Change

This milestone is intended to provide additional low-level and mixed waste analytical services, in the Tri-Cities area, for activities required by the Tri-Party Agreement. Delays in laboratory turnaround times are likely to delay cleanup of the Hanford Site. Approval of this change request and the attached SEC Agreement on Resolution will provide DOE an opportunity to demonstrate that it can meet its requirement to provide laboratory services through contract mechanisms at an overall lower cost than through a government owned laboratory.

SEC AGREEMENT ON RESOLUTION OF
MILESTONE M-14-00 CHANGE REQUEST DISPUTE

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Milestone M-14-00 of the Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement) requires the U.S. Department of Energy (DOE) to complete construction and initiate operations of a low level mixed waste laboratory on or before January 31, 1992. DOE has begun construction of a down-sized version of the laboratory capable of performing quality control of planned commercial laboratory capability. This does not meet the intent of M-14. The Milestone was included in the Agreement to ensure that analysis of Hanford samples would not be unduly delayed. The Agreement allows a seventy-five (75) day annual average for laboratory turnaround times for low level and mixed wastes (up to 10mR/hour), not to exceed 90 days. To date, DOE has repeatedly exceeded the 90-day limit.

On October 31, 1991, DOE submitted a request to change Milestone M-14-00. This request was denied by the U.S. Environmental Protection Agency (EPA) and the State of Washington Department of Ecology (Ecology) on November 8, 1991. DOE initiated the dispute resolution procedures of the Agreement on November 15, 1991. The parties engaged in extensive discussions and public interaction, and have subsequently agreed on a proposal to resolve this issue.

DOE acknowledges that it did not follow Tri-Party Agreement procedures for seeking modification to the Tri-Party Agreement or otherwise obtain approval from the regulators before placing a construction hold and taking steps to obtain commercially available laboratory services. DOE also acknowledges that without formal approval by the regulators, DOE is obligated under the Agreement to continue working on (remain in compliance with) the milestones. It is recognized, however, that there was informal communication by DOE to the regulators on an alternative approach being considered.

DOE agrees to the assessment of a penalty consistent with the terms of the Agreement. In exchange EPA and Ecology in accordance with the following terms will not seek additional penalties for violations to date of M-14-00 and the Tri-Party Agreement's analytical turnaround times.

DOE, EPA, and Ecology agree to the following specific terms and conditions:

1. DOE will exercise best efforts to award a contract(s) by July 1993, which provides sufficient low-level mixed waste commercial laboratory capacity to meet Tri-Party Agreement sampling and analysis requirements. TPA interim milestones will be established, leading to an October, 1995 commencement of operations, after award of the contract. Near-term laboratory capacity will not be specifically constrained to local services. However, to ensure compliance with the Tri-Party Agreement Milestone, DOE will provide for procurement of locally-provided laboratory services for the long term designed to handle 80% or more of the low-level analytical requirements for the Environmental Restoration/Waste Management Programs at the Hanford Site. The requirement for local services shall be satisfied by a facility located within a 25 mile radius from the Hanford Site Boundary.

M-14 SEC AGREEMENT

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2. DOE shall provide a briefing to Ecology and EPA quarterly in the Tri-Party Agreement Project Manager Milestone Review Meetings which will provide the status of its progress in maintaining compliance with this SEC Agreement and the associated M-14 Milestones. If circumstances occur which may delay completion of any of the work required under this SEC Agreement or the M-14 Milestones, DOE shall promptly notify Ecology and EPA in writing. In any event, DOE is subject to enforcement action, including penalties, if it fails to comply with the requirements and schedules contained in this SEC Agreement and in the M-14 Milestones.

3. The down-sized onsite laboratory presently under construction by DOE will be used primarily for Quality Assurance and Quality control of DOE and commercial laboratories and low-level (less than 10 mR/hr) process-control analyses.

4. DOE remains bound by the laboratory turnaround times specified in the Tri-Party Agreement, unless specifically modified in accordance with the Tri-Party Agreement modification provisions, and remains subject to enforcement action, including penalties for future violations of Milestone M-14 and Tri-Party Agreement analytical turnaround time requirements. Turnaround times begin to run on the day the sample is taken and end when the data package is received from the laboratory by DOE or its contractors.

5. DOE acknowledges that it violated Milestone M-14-00 of the Agreement, and agrees to the assessment of a \$100,000 penalty for this violation pursuant to Article XIX of the Agreement. DOE will request \$100,000 in accordance with Article XIX of the Tri-Party Agreement to cover the penalty, and will deposit that amount into the Hazardous Substances Response Trust Fund to the extent such funds are authorized and appropriated for the specific purpose.

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6. DOE commits to a response action at the Hanford Site as a result of this agreement. This response action at N-Springs will reduce the Strontium-90 contamination flux to the groundwater that feeds N-Springs, evaluate commercially available treatment options for Strontium-90, and provide data necessary to set demonstrable Strontium-90 groundwater clean-up standards. The approval mechanism for this response action will be the non-time-critical Expedited Response Action (ERA), defined in the Hanford Past Practice Strategy. Because this response action is a result of a noncompliance with TPA Milestone M-14, DOE commits to establish enforceable TPA milestones for this response action. Milestones will be established upon approval of the Engineering Evaluation/Cost Analysis (EE/CA). DOE further commits to seek funding in FY 1994 and in subsequent years, as required to complete existing (approved) ERAs and the N-Springs response action identified herein, in a manner so as not to impact required Tri-Party Agreement compliance activities.

Fred Olson

Fred Olson
Acting Director
State of Washington
Department of Ecology

1-8-93

Date

Dana A. Rasmussen

Dana A. Rasmussen
Regional Administrator
U.S. Environmental Protection Agency
Region 10

January 8, 1993

Date

John G. Wagoner

John G. Wagoner
Manager
U.S. Department of Energy
Richland Field Office

1/11/93

Date

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